

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTOPHER SMITH,

Plaintiff

v.

C-1-10-842

DAVID SCHAEFER, *et al.*,

Defendants

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 8) and plaintiff's objections thereto filed January 4, 2011 (doc. no. 12). The Magistrate Judge concluded that plaintiff has not demonstrated his conviction has been overturned or invalidated and therefore recommended that plaintiff's Complaint against defendants under 42 U.S.C. § 1983 be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law.

CONCLUSION

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge (doc. no. 8). Plaintiff's Complaint (doc. no. 7) against defendants under 42 U.S.C. § 1983 is DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B). *Diehl v. Nelson*, 198 F.3d 244 (6th Cir. (Mich.) 1999).

Plaintiff's Motion for Testing and Analysis at Public Expense (doc. no. 13) is DENIED AS MOOT. *Id.* Plaintiff's Motion for Habeas Relief (doc. no. 14) and plaintiff's Motion for a New Trial (doc. no. 15) are DENIED. Plaintiff's custodian is not a party this proceeding.

For all of the above reasons, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith. *See, McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997). The Court therefore DENIES plaintiff leave to proceed *in forma pauperis* in the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court